

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

REINBOLD, DOUGLAS,)	
)	
Plaintiff,)	
vs.)	
)	
HARRIS, DON, IN BOTH HIS)	
PRIVATE INDIVIDUAL CAPACITY ADN)	
OFFICIAL PUBLIC CAPACITY AS A)	
POLICE OFFICER OF THE CITY OF)	
GREENWOOD,)	
CITY OF GREENWOOD, INDIANA,)	CAUSE NO. IP00-0587-C-T/?
SAMS CLUB INC* DISMISSED PUR)	
ENTRY OF 11/07/00,)	
)	
Defendants.)	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DOUGLAS REINBOLD,)	
)	
Plaintiff,)	
)	
vs.)	IP 00-0587-C-T/K
)	
DON HARRIS, in both his private)	
individual capacity and official public)	
capacity as a police officer of the City)	
of Greenwood; CITY OF)	
GREENWOOD, INDIANA,)	
)	
Defendants.)	

**ENTRY ON PLAINTIFF'S MOTION TO RECONSIDER AND DEFENDANTS' MOTION
TO STRIKE PLAINTIFF'S MOTION TO RECONSIDER¹**

Plaintiff filed a Motion to Reconsider this court's grant of Defendants' Motion for Partial Summary Judgment. Defendants filed a Motion to Strike Plaintiff's Motion as untimely. This court now **DENIES** both Plaintiff's and Defendants' Motions.

I. Factual and Procedural Background

This lawsuit arises out of a traffic altercation on October 22, 1998. On that day, Don Harris, a police officer with the City of Greenwood, was dispatched to the parking lot of

¹ This Entry is a matter of public record and is being made available to the public on the court's web site, but it is not intended for commercial publication either electronically or in paper form. Although the ruling or rulings in this Entry will govern the case presently before this court, this court does not consider the discussion to be sufficiently novel or instructive to justify commercial publication of the Entry or the subsequent citation of it in other proceedings.

Sam's Club for an allegedly drunk driver. When Harris arrived at Sam's Club, Complainant, William J. Chamberlain, told him that a blue Honda cut him off, gave him "the bird," and headed towards Sam's Club. Chamberlain then followed the Honda to get its license plate number. When Chamberlain turned into the Sam's Club parking lot, the other person stopped their car, put it into reverse, and skidded the tires, heading towards Chamberlain. The driver of the Honda then got out of the car and started calling Chamberlain a "pussy."

As Harris was getting information from Chamberlain, Douglas Reinbold exited Sam's Club and was identified as the driver of the blue Honda. Harris approached Reinbold and the parties dispute what happened next. Harris claims that Reinbold was belligerent and an altercation broke out. Reinbold claims that Harris demanded that he identify himself, that Reinbold responded by pointing to his name on his jacket and asking, "what is your probable cause," and then Harris injured him. Harris arrested Reinbold. Reinbold was charged with resisting law enforcement, failure to identify, and disorderly conduct. On January 10, 2000, all criminal charges against Reinbold were dismissed. On April 7, Reinbold filed this suit against Harris, the City of Greenwood, and Sam's Club, Inc., alleging that Harris used excessive force and arrested him without probable cause in violation of 42 U.S.C. § 1983 and that Harris and employees of Sam's Club destroyed videotape of the day of the incident from the Sam's Club surveillance camera. On October 2, 2000, Plaintiff amended the complaint to add a charge that Defendants violated Article I, Section 9 of the Indiana Constitution. On November 7, 2000, judgment was entered

against Reinbold on the counts against Sam's Club. On February 14, 2001, the City of Greenwood and Harris filed a Motion for Partial Summary Judgment. That same day this court granted judgment on the pleadings as to the Indiana Constitutional claim. On September 12, Plaintiff filed a brief in opposition to the Motion for Partial Summary Judgment. On January 30, 2002, this court granted Defendants' Motion for Partial Summary Judgment holding that there was probable cause to arrest Reinbold, no custom, practice, or policy to hold Greenwood liable, and no compliance with the Indiana Torts Claim Act. On February 19, Plaintiff filed a Motion to Reconsider. Defendants then filed a Motion to Strike Plaintiff's Motion to Reconsider. The court now rules as follows.

II. Motion to Strike

Defendants' sole contention in their Motion to Strike is that Plaintiff's Motion to Reconsider is untimely under Federal Rule of Civil Procedure 59. Rule 59 provides that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Defendant contends that because the February 19 Motion to Reconsider was filed more than ten days after this court's Entry on the Motion for Partial Summary Judgment, the Motion to Reconsider is untimely and must be stricken. However, Federal Rule of Civil Procedure 54(b) provides that:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which

adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Because there was no express determination that there is not just reason for delay, no express direction for the entry of judgment, and the entry itself noted that “Because of the pendency of these remaining claims, a final judgment will not be entered at this time” and “Defendants’ Motion for Partial Summary Judgment will be **GRANTED**,” it does not appear that a final judgment has been entered. (Entry at 15-16.) Because entry of judgment has not been made, Rule 54(b) of the Federal Rules of Civil Procedure authorizes reconsideration of the court’s Entry on Defendant’s Motion for Partial Summary Judgment. Fed. R. Civ. R. 54(b) (“any order or other form of decision, however designated, which adjudicates fewer than all the claims . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and rights and liabilities of all the parties.”); see *Fisher v. Nat’l R.R. Passenger Corp.*, 152 F.R.D. 145, 149 (S.D. Ind. 1993) (“[I]t is well established that a district court has the inherent power to reconsider interlocutory orders and reopen any part of a case before entry of final judgment.”) (citations omitted). Therefore, Defendants’ Motion to Strike is denied.²

III. Motion to Reconsider

²On March 1, 2002, this court granted Defendants’ Motion for Enlargement of Time, giving the Defendants ten days from this court’s order on the Motion to Strike to respond to the Motion to Reconsider. However, given the resolution of Part III, below, no response is necessary.

Plaintiff first claims that this court's conclusion that the charges of resisting law enforcement, failure to identify, and disorderly conduct are "similar enough to the charges of intimidation and criminal recklessness" to provide probable cause to arrest Plaintiff is incorrect. Plaintiff bases this conclusion on *Williams v. Jaglowski*, 269 F.3d 778, 783 (7th Cir. 2001), in which the Seventh Circuit stated that "[i]n order to rely on a closely related charge, . . . the officer[] must show that the charge can reasonably be based on the same set of facts that gave rise to the arrest." Plaintiff contends that the facts that led to his arrest were Officer Harris asking Plaintiff's name and Plaintiff's response of pointing to the name patch on his coat and asking what probable cause was. Plaintiff appears to rely on these facts because of Harris' testimony that he did not have probable cause to arrest until after Reinbold failed to provide Harris with identifying information. (Pl.'s Ex. 1.) However, an officer's subjective belief on probable cause is not determinative. As the Seventh Circuit noted:

While an arresting officer's subjective knowledge of facts sufficient to constitute probable cause is central to evaluation of the propriety of an arrest, we do not believe that the officer's view of the legal basis for the arrest is important. . . . [A]n objective standard applies where the parties present alternative legal justifications for an arrest. The issue is whether a reasonably competent police officer, with knowledge of the facts actually known by the arresting officer would have concluded that probable cause existed

Biddle v. Martin, 992 F.2d 673, 676 (7th Cir. 1993) (quotations and citations omitted).

Therefore, the issue is not what Harris believed constituted probable cause, but whether the information Harris knew would have led a reasonably competent officer to conclude that there was probable cause to arrest Reinbold. Looking at the facts known to Harris, a

reasonably competent officer would have known that there was probable cause to arrest Reinbold for intimidation and criminal recklessness. Harris had been told of Reinbold's actions (aiming his car at Chamberlain) prior to Reinbold's exiting Sam's Club. These facts were sufficient to form probable cause for the arrest.

This court next addresses Reinbold's claim that the facts that gave rise to the arrest did not create probable cause to arrest Reinbold on the charges of intimidation and criminal recklessness. Reinbold was arrested for resisting law enforcement, failure to identify, and disorderly conduct after he refused to answer Harris' questions and then became belligerent. These incidents arose from Reinbold's interactions with Chamberlain. Reinbold has presented no authority for looking at the facts of the arrest as narrowly as he does. Rather, it appears to this court that the justifications for the arrest were neither novel or extravagant. *Richardson v. Bonds*, 860 F.2d 1427, 1431 (7th Cir. 1988). Furthermore, this seems to fall within the range of related charges accepted by other courts. See, e.g., *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1183 (5th Cir. 1990) (charged with criminal trespass, but probable cause for disorderly conduct), *abrogated on other grounds recognized by Martin v. Thomas*, 973 F.2d 449 (5th Cir. 1992). Harris arrived on the scene because of complaints regarding Reinbold's driving and his actions in the Sam's Club parking lot. These actions led directly to the confrontation between Reinbold and Harris and Reinbold's arrest. The two sets of charges are sufficiently related and based on the same facts.

IV. Conclusion

For the foregoing reasons, Defendants' Motion to Strike is **DENIED** and Plaintiff's Motion to Reconsider is **DENIED**.

ALL OF WHICH IS ORDERED this 8th day of March 2002.

John Daniel Tinder, Judge
United States District Court

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